Goddard

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Saxon Corporation

File: B-237629

Date: February 26, 1990

John M. Taffany, Esq., Bailey & Shaw, P.C., for the protester.
Christine Williams, Esq., Office of the General Counsel, General Services Administration, for the agency.
V. Bruce Goddard, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found low bidder nonresponsible on solicitation for an automotive maintenance/repair contract, where the bidder has no current automotive maintenance contract, a pre-award survey team received unsatisfactory reports on the bidder's only prior contract for this work, the bidder's other contract work is not readily transferable, and the agency was reasonably concerned about the bidder's personnel staffing.

DECISION

Saxon Corporation protests its rejection as nonresponsible under invitation for bids (IFB) No. 7FXI-G5-89-S020-S, issued by the General Services Administration (GSA) for the repair, maintenance and overhaul of a minimum of 725 government-owned vehicles at Fort Bliss, Texas.

We deny the protest.

The IFB called for services to be provided under a 1-year requirements contract, with an option to extend the contract for two additional 1-year periods. Saxon submitted the apparent low bid and GSA performed a pre-award survey of Saxon. The plant facilities report conducted by GSA found that Saxon was not performing any current automobile maintenance/repair or similar contracts; that the only automobile maintenance/repair contract experience Saxon had in the past--a contract extending from 1984 to 1987 at Kelly Air Force Base--was unsatisfactory; and that Saxon did not

have sufficient personnel or equipment for the proposed contract. Based on this information, the contracting officer determined Saxon nonresponsible.

Saxon alleges that the determination of nonresponsibility was based on an erroneous and insufficient review of its past performance and capabilities. Saxon contends that GSA's finding, that the Kelly contract was unsatisfactorily performed, was based on the pre-award survey teams inaccurate picture of the Kelly contract caused by the team's decision to only interview individuals at Kelly who only had a few months involvement with the contract. Saxon also contends that its extensive experience in repair and overhaul of various types of ground support equipment is similar work to that being performed in this IFB but GSA improperly discounted this experience. Finally, Saxon contends that it has adequate personnel and equipment for the contract notwithstanding GSA's statements to the contrary.

The determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer, who, in making that decision, must, of necessity, rely primarily on his or her business judgment. Pathlab, P.A., B-235380, Aug. 4, 1989, 89-2 CPD ¶ 108. While the determination should be based on fact and reached in good faith, it ultimately will be left to the discretion of the contracting agency, which must bear the responsibility for any difficulties during performance. Id. Because of this broad discretion, our Office generally will not question a negative determination of responsibility unless the protester can demonstrate that the agency acted in bad faith or lacked a reasonable basis for the determination. Id.

GSA states that when the plant facilities review was being conducted, Saxon was not performing automobile repair work, either commercially or under government contract. Consequently, GSA asked Saxon to provide names of people associated with the earlier Kelly contract so that Saxon's performance abilities in this field could be determined. However, Saxon did not provide GSA with any references for this contract, stating that all government personnel involved in the Kelly contract had retired. GSA then contacted three employees at Kelly, the motor pool manager and two contract specialists who had been assigned to Saxon's contract. They indicated that Saxon's performance under the Kelly contract was poor and that Saxon had not manned the facility adequately. The motor pool manager, who stated that he had been assigned to the motor pool during a substantial period of Saxon's contract, referred to

increased user complaints concerning the quality of work and the increased rate of vehicle down time under the Saxon contract.

Saxon responds in its comments on GSA's report that while the total contract value of the Kelly contract was $11,393,571.24, Saxon only incurred $4,155.35 in contract discrepancy deductions. Further, Saxon states that the Kelly contract was extended several times through options and Saxon never received a show cause notice or a cure notice. Saxon also asserts that the three individuals with whom GSA discussed Saxon's performance at Kelly were not assigned to the Saxon contract for the duration of the contract and, in fact, only had an involvement with that contract for several months. Saxon contends that the motor pool manager in particular was only assigned to the contract for the last 3 months of the contract's duration. Saxon states that none of the contract discrepancy reports, contract performance evaluation reports and customer complaint records for the Kelly contract show the motor pool manager's signature and they only show the signatures of the two contract specialists interviewed by GSA, once each. Saxon concludes that the employees at Kelly who were interviewed concerning Saxon's performance had insufficient knowledge to give an informed assessment of Saxon's performance, and that it was unreasonable to base the nonresponsibility determination on that data.

We think GSA's reliance on the plant facilities report was reasonable. The solicitation clearly warned bidders that,

> "contractor responsibility is an important element that must be determined before a contract will be awarded. We will check such items as the bidder's capability to perform, capacity to handle the estimated daily vehicle repair, credit and business reputations. A contract will not be awarded to any company that lacks the ability to perform."

In view of Saxon's inability to give GSA even one individual reference for its prior 3-year contract at Kelly, we cannot fault GSA for the manner in which it made its own inquiries into Saxon's past performance. With regard to the Kelly motor pool manager who was consulted, the record shows that he advised GSA that he was involved with Saxon's Kelly contract during a substantial period. Moreover, even assuming Saxon is correct in asserting this individual only monitored Saxon during the last 3 months of the contract, it is therefore true that he has the most recent knowledge of Saxon's performance of the motor vehicle maintenance/repair

contract. Moreover, the motor pool manager's criticism of Saxon's performance was specific; he noted that complaints of Saxon's quality of work and vehicle down time were increasing. GSA's reliance on this advice was reasonable particularly since Saxon itself could offer no references for the Kelly contract. That Saxon may actually have been charged with a small dollar amount in contract penalties is not necessarily inconsistent with the advice GSA received from the Kelly employees especially since the dissatisfaction with Saxon's performance was apparently increasing as the contract ended.

In any event, the fact that Saxon now produces information which might shed further light on its past performance does not indicate the contracting officer's nonresponsibility determination was unreasonable, since a contracting officer may base a determination of nonresponsibility on the evidence in the record without affording bidders the opportunity to explain or otherwise defend against the evidence. Betakut USA, Inc., B-234282, May 8, 1989, 89-1 CPD ¶ 432. We find, therefore, that the record reasonably supports the determination that Saxon's Kelly automotive maintenance/repair contract was poorly performed. This is significant since Saxon had no other automotive maintenance/repair experience, commercial or government.

We also find that GSA could reasonably find that Saxon's extensive experience in ground support equipment overhaul and repair is not necessarily translatable to automotive vehicle maintenance and repair. During the plant facilities review, GSA informed Saxon that GSA did not view overhaul of this equipment as comparable to automotive vehicle maintenance and repair. Saxon now argues that both types of contracts involve contractor responsibility for providing labor, parts and material and for furnishing shop equipment items peculiar to the repair effort. However, as Saxon itself admits, although in some cases common shop items are used in both ground support equipment and automotive repair, for the most part diagnostic equipment used for a vehicle repair contract is not used for ground support equipment repair. Moreover, the ground support equipment consists of items that are not self propelled and do not utilize total drive train assemblies and relatively sophisticated electronics as in automobiles. Saxon has not shown, therefore, that performance of the other contracts involved the necessary knowledge, skills and work processes which are applicable to automobile maintenance and repair. We find, therefore, that GSA was entitled to discount Saxon's ground support equipment maintenance experience when it evaluated Saxon's ability to perform an automobile repair, maintenance and overhaul contract.

GSA's concerns about Saxon's personnel also seem reasonable. In this regard, GSA states that the resumes Saxon submitted failed to show whether the individuals were qualified in motor maintenance and overhaul of the vehicles specified in the IFB. In addition, in view of Saxon's performance on the Kelly contract, GSA was concerned with Saxon's stated intention to operate the facility with 3 or 4 mechanics and 4 helpers when GSA determined 6 or 7 mechanics and 2 helpers were needed. Further, GSA was concerned with Saxon's plan to obtain qualified unemployed mechanics from the Texas Employment Commission.

Saxon responds that its bid promised to perform the specifications unconditionally so whether or not compliance with the specifications requires more effort than Saxon anticipated is irrelevant. However, GSA's concern over Saxon's intent to operate the facility with half the skilled mechanics GSA felt were needed seems reasonable in light of the plant facilities report finding that Saxon performed poorly in providing timely quality service on its only automotive repair contract.

In view of the fact that this contract initiated a program whereunder GSA took over vehicle maintenance at Fort Bliss from the Army, who apparently performed this function in-house, GSA was legitimately concerned over Saxon's ability to start up and provide the required services, given its relative lack of experience in this area. Moreover, the Federal Acquisition Regulation (FAR) provides that in the absence of information clearly indicating that a prospective contractor is responsible the contracting officer is required to make a determination of nonresponsibility. FAR § 9.103(b) (FAC 84-18). Based on the foregoing, we think GSA had a reasonable basis to find Saxon nonresponsible.

The protest is denied.

for Seymour Efros
James F. Hinchman
General Counsel